



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

February 19, 2016

Isenhart Irrigation District  
c/o Marc Marquis, Attorney at Law  
1227 First Street  
Wenatchee, WA 98801

Re: Surface Water Change Authorization No. CS4-01086C

Dear Mr. Marquis:

On October 13, 2015, Ecology received a Completion of Construction extension request for the above-referenced Change Authorization. Ecology was unable to process the request due to lack of information. Subsequently you submitted additional details in December 2015. In response to this request, Isenhart Irrigation District is hereby **denied** an extension of time in which to complete construction.

On August 4, 2008, the Chelan County Conservancy Board (Board) processed and approved the April 21, 2008, application for change in purpose of use, place of use, and to add points of diversion, and issued a Report of Examination (ROE). In October the Board withdrew the ROE per Ecology's recommendation and resubmitted a revised ROE on December 15, 2008. Ecology then issued an Order reversing and denying the Board's resubmitted approval on February 27, 2009, which was appealed by the applicant.

On October 8, 2009, Ecology and the applicant agreed to and signed the *Stipulated and Agreed Order of Dismissal*, and Ecology issued a *Superseding Modification Order* on June 18, 2010. *Appendix A* to the *Stipulated and Agreed Order of Dismissal* outlined the development schedule as follows:

There may be additional construction necessary, which shall be completed by 12-31-2015, and put to beneficial use by 12-31-2021. Provided that, for good cause shown, and upon a demonstration of due diligence, the dates for development set forth above may be extended by Ecology upon the written request of the applicant no later than **12-31-2014**.

You submitted the extension request on October 7, 2015, and Ecology received it on October 13, 2015, almost one full year beyond the agreed upon date required in the *Superseding Modification*. Ecology denies the extension for lateness and noncompliance with this agreed upon and binding contractual condition.

Additionally, the supplemental information provided in support of your extension request does not sufficiently demonstrate the required due diligence. The information provided indicates:

- "No new points of diversion have been installed since 2010."



- “Considering that the binding site plan for the planned development requires that 50% of the property be used for light industrial purposes and that currently no such uses are in place, we estimate that it may take approximately 50 years before it is completed.”
- “. . . there is no obvious development timeline for these 107 acres . . .”

A Permit holder is required under RCW 90.03.320 to pursue the completion of a project with due diligence. As evidence by your letter dated December 11, 2015, due diligence has not been shown and there is no support that an extension is in the public’s interest.

The State Water Code does not allow the reservation of water for use at an unspecified time in the future. As such, Ecology cannot conclude that the development of the Change Authorization is being pursued in good faith and with due diligence.

There have historically been several Pollution Control Hearings Board (PCHB) cases in which they ruled on criteria for granting extensions of time to develop beneficial use.

The following examples illustrate additional reasons why Ecology is denying this extension:

- Increased scrutiny must be exercised by Ecology because this permit is “long-standing,” and based on the file history, where there have been fits and starts with sporadic efforts to pursue the project and there has been a significant amount of time since the Permit was issued and there are significant times when there was no substantial activity. *Concerned Neighbors of Lake Samish v. Ecology*, PCHB Nos. 11-26, 11-127, and 11-128 (2012).
- Good cause for further extension of development schedule was not shown where ground water appropriation was uncompleted after six years and no evidence was presented indicating a likelihood of imminent progress toward completion. *Taggares v. Ecology*, PCHB No. 79\*-174 (1980).
- Assertion of depressed economic conditions and lack of funds to develop is not sufficient reason to overturn Ecology’s cancellation of permit for failure to meet development schedule. *Williamson and Sheller v. Ecology*, PCHB No 78-153 (1979).

Consistent with the reasons given above, the lack of due diligence and commitment to putting the water to full beneficial use does not meet the statutory criteria.

If you wish to keep the portion of the Change Authorization that is complete in good standing, a ***Completion of Construction notice must be submitted to Ecology within sixty (60) days of this letter to avoid cancellation of the Change Authorization.*** According to your estimate in your December 2015 letter, complete construction should include the 1 point of diversion from the Chelan River, and the ability to deliver water to include 7 acres of irrigation at Lake Chelan School District athletic fields, 5 acres reallocated to the concrete plant for industrial use, 10 acres for fire protection, and 3.6 acres of warehouse beautification.

#### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. “Date of receipt” is defined in RCW 43.21B.001(2).



To appeal you must do all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION	
Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503  <b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater WA 98501	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608  <b>Pollution Control Hearings Board</b> PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>  
To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

If you have any questions or concerns about this information, please call the Department of Ecology at (509) 575-2597.

Sincerely,



Thomas Perkow, Acting Section Manager  
Water Resources Program  
Central Regional Office

TP:CLG:SS/160238  
WR ID# 4498960

Enclosures: Your Right to Be Heard  
Completion of Construction form  
Extension request dated 10/07/15 and 12/11/2015 (copy)

By certified mail: 7014 3490 0001 5527 9216

cc: Isenhart Irrigation District

